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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

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WILLIE L. MCQUEEN,

Plaintiff,

*versus*

TERRY SATCHER, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:04-CV-507

**MEMORANDUM OPINION AND ORDER**

Plaintiff Willie L. McQueen, formerly an inmate confined at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se* and *in forma pauperis*, brought this *Bivens*-type action.<sup>1</sup>

A final judgment has been entered in this action, dismissing plaintiff's claims. When dismissing this action, the court adopted a report of the magistrate judge recommending plaintiff's complaint should be dismissed for failing to exhaust available administrative remedies. Plaintiff did not file objections to the report.<sup>2</sup> Plaintiff has filed a motion for relief from judgment (docket entry no. 76). This memorandum opinion and order considers such motion.

Analysis

Rule 60(b), FED. R. CIV. P. provides in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud ..., misrepresentation,

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<sup>1</sup> See *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

<sup>2</sup> It is noted that the copy of the report mailed to plaintiff by certified mail was returned to the court unclaimed.

or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from operation of the judgment.

Plaintiff asserts that he did not receive a copy of the Report. After carefully considering plaintiff's motions, the court has determined that reconsideration of the court's final judgment is warranted to allow plaintiff an opportunity to file objections to the Report if he chooses. Accordingly, plaintiff's motion should be granted and plaintiff permitted time to file objections to the report and recommendation of the magistrate judge should he choose to do so. It is therefore,

**ORDERED** that plaintiff's motion for relief from judgment is **GRANTED** to the extent plaintiff will be provided an opportunity to file objections. Additionally, it is

**ORDERED** that the Clerk of Court is **DIRECTED** to mail to plaintiff via certified mail a copy of this order and a copy of the report and recommendation entered on October 12, 2006. Plaintiff's objections, if any, shall be due on or before the expiration of ten (10) days from the date of this order. If plaintiff files objections within the ten days provided in this order, the court will direct the Clerk to reinstate his complaint on the court's active docket and will consider plaintiff's objections.

SIGNED at Beaumont, Texas, this 24th day of September, 2007.



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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE